

Advertising for electronic cigarettes and tobacco products

EGTA ISSUE BRIEF ON E-CIGARETTE ADVERTISING

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// Context

While the advertising of tobacco products has been banned in the EU for a number of years, as a way to curb smoking and lift the burden on the health services, a new product has entered the market which is questioning these rules- the electronic cigarette. A relatively new product, the popularity of e-cigarettes is growing progressively in many countries, and in 2013 e-cigarette sales reached \$2bn globally and are expected to grow at a 50% compound annual rate over the next few years.

Much research is being undertaken to determine whether these devices known as e-cigarettes are indeed less dangerous than traditional cigarettes and whether they are a gateway to smoking. New questions arise in the context of advertising, such as whether these new products should be treated in the same manner as tobacco products and therefore be banned or they are actually smoking cessation devices and therefore considered as medical devices and can be advertised.

// Global and EU legislation

The Tobacco Advertising Directive (2003/33/EC) put an EU-wide ban on cross-border tobacco advertising and sponsorship in media other than television. The ban covers print media, radio, Internet and sponsorship of events involving several Member States, such as the Olympic Games and Formula One races. Free distribution of tobacco is banned at such events. The ban covers advertising and sponsorship with the aim, or direct or indirect effect, at promoting a tobacco product.

Regarding television, both advertising and sponsorship of tobacco products have been banned since 1989 under the Television without Frontiers Directive. This was replaced by the Audiovisual Media Services Directive (2010/13/EU), which extends the application of this ban to all forms of audiovisual commercial communications, including product placement.

At the international level, Article 13 of the World Health Organisation Framework Convention on Tobacco Control (FCTC) lays down the obligations

of the signatories to ban or restrict tobacco advertising, promotion and sponsorship.

With the adoption of the revised text on the Tobacco Products Directive in the European Parliament plenary on 26 February 2014, the advertising of e-cigarettes has come under strict rules designed to ensure equal treatment across the EU for **nicotine containing e-cigarettes (products that do not contain nicotine are not covered by the Directive).**

The new rules will not apply to medicinal e-cigarettes or medical devices¹, but will cover all consumer electronic cigarettes placed on the EU market. E-cigarettes can be disposable (i.e. single use), rechargeable (with a single use cartridge) or refillable (by means of a refill container).

E-cigarettes will be regulated as tobacco products, which means they cannot be advertised or part of a sponsorship deal or product placement. This is unless they are presented as having curative or preventative properties, in which case they are regulated as medicinal products, and this would allow them to be advertised as smoking cessation aids.

The new Directive entered force in May 2014 and Member States have two years to transpose it into national legislation.

// National regulation/guidelines

Regarding tobacco, it should be noted that national advertising and local promotion of tobacco products remains under national competence and is still permitted. Whilst in many Member States, all forms of advertising of tobacco products is banned, it is not the case in all (for instance Germany), and in many Member States advertising is

still allowed at point of sale or on billboards

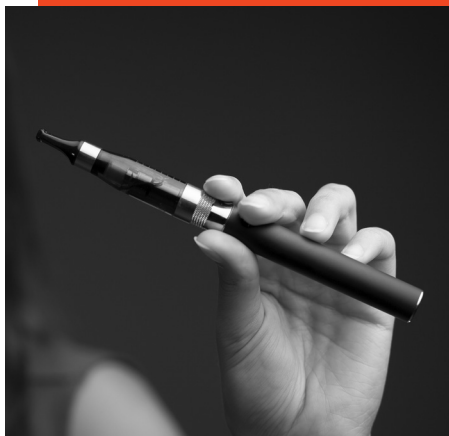
Under the Directive, a number of decisions on e-cigarettes will be left to the Member States, e.g. the regulation of flavours, advertising without cross-border effects and age limits. While waiting for the implementation of the Directive, some countries including France² and the UK³ have published guidance on the advertising of e-cigarettes with a specific focus on protecting minors from such advertisements.

Other countries such as Austria deem e-cigarettes to be medical products while legal test cases in Germany and the Netherlands have ruled the opposite.

// Research

Below are some recent research pieces from both sides of the debate:

Health Survey For England : Ecigs And Vaping (December 2014). This report states that 3% of adults



¹ As determined by directives 2001/83/EC and 93/42/EEC on medicinal products and medical devices.

² http://www.arpp-pub.org/IMG/pdf/circulaire_encadrement_publicite_dispositifs_electroniques_vapotage-2.pdf

³ <http://cap.org.uk/News-reports/Media-Centre/2014/~media/Files/CAP/Consultations/ecig%20consultation/Regulatory%20Statement.aspx>

were currently using e-cigarettes (vapourisers) in 2013. The survey also found little evidence of e-cigarette uptake by non-smokers. Among men, 29% of current smokers, 6% of ex-smokers and just 1% of never smokers had ever used e-cigarettes and the proportions were similar for women.

<http://www.hscic.gov.uk/catalogue/PUB16076/HSE2013-Ch8-adult-cig-smo.pdf>

Electronic Cigarettes Are Effective for Smoking Cessation:

Evidence From a Systematic Review and Meta-analysis (December 2014). A systematic review of six studies, including two randomised controlled trials, concluded 18% of 1,242 participants reported smoking cessation after using e-cigarettes containing nicotine for a minimum period of six months. Vaping was also effective in reducing smokers' daily cigarette consumption.

http://m.circ.ahajournals.org/content/130/Suppl_2/A14945.short

Electronic Nicotine Delivery Systems (August 2014).

A report from WHO examining what it states is emerging evidence on the health impacts of electronic nicotine delivery systems (ENDS) use. It says e-cigarettes "represent an evolving frontier, filled with promise and threat for tobacco control". It also states, "the evidence and recommendations presented in this report are therefore subject to rapid change".

http://apps.who.int/gb/fctc/PDF/cop6/FCTC_COP6_10-en.pdf

Hungary Global Youth Tobacco Survey (GYTS) Fact Sheet 2012.

This survey found that 13% of 13-15 year old children had experimented with an e-cigarette.

http://www.fokuszpont.dohanyzasvisszaszoritasa.hu/sites/default/files/0_GYTS_Factsheet_HU_FINAL_19062013.pdf

Office français de prévention du tabagisme. Rapport et avis d'experts sur l'e-cigarette. A French study of

2013 revealed that the number of Paris students experimenting with e-cigarettes has doubled in 1 year reaching 18%. Among the representative sample, 34% were non-smokers.

<http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/134000328/0000.pdf>

additional egta information available upon request:

- egta's document on e-cigarettes offers further information on Member States' regulation and definition of medical devices.

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